

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application. Regarding the amendments, Applicants respectfully submit that no new matter has been raised in the amendments since the subject matter may be found, among other places, on pages one and five of the specification as originally filed. In this regard, the amendments comply with 35 USC §132. Finally, Applicants acknowledge and appreciate that all prior rejections have been withdrawn and rendered moot.

I. Rejection Under 35 USC §103

The Examiner has rejected claims 1, 5-14, 16-18 and 20 under 35 USC §103 as being unpatentable over Fisher et al., U.S. Application No. 2006/0275506 (hereinafter, '506) or Lehmberg et al., U.S. Patent No. 6,423,361 (hereinafter, '361).

In the rejection, the Examiner mentions, in summary, that the '506 reference discloses a beverage composition with tea and water and leucine hydrochloride.

The Examiner also mentions that the '361 reference discloses a beverage composition with tea solids, water and phosphoric acid. The Examiner believes that while the references of record differ "in the use of a particular pK_{a1} and pK_{a2} ", the claimed polyprotic agents have been disclosed and thus the pK as should be within the claimed range. Thus, the Examiner believes that the presently claimed invention is obvious and that the rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, as now presented, is directed to a tea beverage comprising:

- a) water;
- b) a polyprotic antimicrobial agent having a pK_{a1} of less than about 2.6 and a pK_{a2} of less than about 3 or greater than about 6, or both; and
- c) at least about 0.01% by weight tea solids

wherein the beverage is substantially free of citric acid and the polyprotic antimicrobial agent is a hydrochloride of glycine, alanine, valine, isoleucine, phenylalanine, asparagine, glutamine, tryptophan, serine, tyrosine, hydroxyproline, cysteine, proline or mixtures thereof.

Independent claim 1 is further defined by the dependent claims which claim, among other things, the amount of citric acid present; that the beverage may further comprise a dairy source, food flavor, vegetable, cocoa, coffee or a mixture thereof; the weight percent tea solids; that the beverage is not sweetened; that the beverage is not carbonated; the pH of the beverage; the temperature at which the beverage is thermally treated, and the packaging suitable for the beverage.

Independent claim 17, as now presented, is directed to a method for making a microbiologically stable tea beverage comprising in no particular order, the steps of:

- a) mixing a beverage precursor with water and acidulant to produce a mixture;
- and

- b) thermally treating the mixture at a temperature from about 80°C to about 95°C to produce the microbiologically stable beverage

wherein the acidulant is polyprotic and has a pK_{a1} of less than about 2.6 or a pK_{a2} of less than about 3 or greater than about 6 and the beverage comprises at least about 0.01% by weight tea solids further wherein the acidulant is a hydrochloride of glycine, alanine, valine, isoleucine, phenylalanine, asparagine, glutamine, tryptophan, serine, tyrosine, hydroxyproline, cysteine, proline or mixtures thereof.

Independent claim 17, as presented, is further defined by the dependent claims which claim, among other things, the amount of tea solids that may be in the tea beverage, and the amount of citric acid that may be present in the tea beverage.

New dependent claim 21 specifies that the beverage of claim 1 may have acidulant that comprises a hydrochloride of phenylalanine, asparagine, glutamine, or a mixture thereof. New claim 22 further defines the method of claim 17 such that the acidulant present comprises a hydrochloride of phenylalanine, asparagine, glutamine, or a mixture thereof.

In contrast, the '506 reference is merely directed to combinations of soy protein, chromium and free leucine in amounts effective to inhibit the loss of lean body mass of a subject who is under conditions of caloric restriction. The present invention, as claimed, is directed to a stable tea beverage that has exceptional flavor characteristics even after being thermally processed and in the absence of substantial amounts of citric acid. The acidulant employed in the present invention, as now presented, comprises polyprotic antimicrobial agent which is a hydrochloride of glycine, alanine, valine, isoleucine, phenylalanine, asparagine, glutamine, tryptophan, serine, tyrosine,

hydroxyproline, cysteine, proline or mixtures thereof. None of the important and critical limitations set forth in the present invention as now claimed are even remotely described in the '506 reference. In fact, and again, the '506 reference is directed to various combinations of soy protein, chromium and free leucine to preserve lean body mass under conditions of caloric restriction.

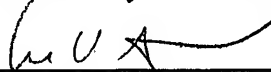
Turning to the '361 reference, the same is directed to a method for preparing beverage strength tea from highly concentrated solutions. The '361 reference does not employ polyprotic antimicrobial agents as set forth in the present invention as now presented. There is no teaching whatsoever in the '361 reference that even remotely describes a beverage or a method for making a microbiologically stable tea beverage that comprises the polyprotic antimicrobial agent as now defined. Particularly, there is no teaching whatsoever in the references relied on by the Examiner that even remotely describes a tea beverage having the exceptional flavor characteristics and microbiologically stability, both of which resulting from the use of the polyprotic antimicrobial agent defined in the claims and in the absence of substantial amounts of citric acid.

In view of the above, Applicants respectfully request that the rejection made under 35 USC §103 be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reexamination and reconsideration are earnestly solicited.

In the event any questions remain, the Examiner is kindly invited to contact the undersigned counsel at her earliest convenience.

Respectfully submitted,



Edward A. Squillante, Jr.
Registration No. 38,319
Attorney for Applicant(s)

EAS/pod
(201) 894-2925